HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

Writ Petition No.24304 of 1995

Between:

M. Vinodan … Petitioner

AND

The Union of India, represented by
its Secretary for Defence, New Delhi
and three others. … Respondents

:: O R D E R ::

Counsel for the petitioner : Sri J. Srinivasa Rao for
Sri S. Krishna

Counsel for the respondents : Sri A. Rajashekar Reddy,
Assistant Solicitor General.

March 28, 2007

This is a petition for quashing Proceedings No.GX.10729/5, dated 14-11-1994 vide which Commanding Officer, INS Circars, Visakhapatnam (respondent No.4) dismissed the petitioner from service on the charge of outraging the modesty of a minor girl aged 8 ½ years.

The petitioner joined Indian Navy in January 1986. After undergoing professional training, he was absorbed in the rank of Electrical Mechanic Power Second Class (EMP.II). In January 1994, he was transferred to Base Maintenance Unit, Visakhapatnam, which is attached to INS Circars. On 3-9-1994, he molested 8½ years girl child Juanita Sinha, D/o Lt. Commander S. Sinha. The officer lodged

a complaint about this incident to Naval Provost Marshal, Eastern Naval Command. After preliminary investigation, a regular enquiry was conducted into the incident by Commanding Officer, INS Circars in accordance with the provisions contained in Regulations of Navy Part-II (for short, 'the Regulations') framed under Section 184 of the Navy Act, 1957 (for short, 'the Act'). Lt. Commander S. Sinha and his daughter Juanita Sinha were examined in support of the complaint. During the enquiry, Captain Vijay Kumar Tewari (Commanding Officer) asked the petitioner whether he would like to cross-examine the witnesses, but he declined to do so. After recording the evidence, the enquiry officer submitted report with the finding that the charge of outraging the modesty of the minor girl Ms. Juanita Sinha has been proved against the petitioner. This led to issue of the proceedings impugned in the writ petition whereby respondent No.4 imposed the following punishments on the petitioner:

" a) Dismissal from the naval service (No.3)
b) Reduction in rank to EMP first class (No.4)
c) Deprivation of second and first good conduct badges (No.5)."

The petitioner challenged his dismissal mainly on the ground of violation of the rules of natural justice. He has averred that before imposing punishment, the respondents did not conduct enquiry in accordance with the Regulations and he was not given opportunity to defend himself.

In the counter affidavit filed by him, Commodore Gottipati Vinoda Babu, the then Commanding Officer, INS Circars, Visakhapatnam has raised an objection to the maintainability of the writ petition on the ground that the petitioner has failed to avail the statutory alternative remedy. He has then given the background in which the enquiry was instituted against the petitioner and averred that the order of punishment was passed after conducting enquiry in accordance with the Regulations. Along with his affidavit, Commodore Gottipati Vinoda Babu has annexed copies of the statements recorded during the enquiry and the summary of evidence.

Sri J. Srinivasa Rao argued that the punishment imposed on the petitioner is liable to be quashed because he was not afforded reasonable opportunity of hearing. He submitted that the petitioner was not informed about the charges on which enquiry was held against him and he was not allowed to cross-examine the witnesses. In regard to the preliminary objection taken in the written statement filed on behalf of the respondents, learned counsel argued that even though the petitioner did not avail the statutory alternative remedy in terms of Section 162 of the Act, this Court rightly entertained the writ petition because one of the exceptions to the rule of alternative remedy is that the Court can entertain writ petition if the action complained of is vitiated due to violation of the rules of natural justice.

Sri A. Rajashekar Reddy, learned Assistant Solicitor General reiterated the objection taken in the counter affidavit of Commodore Gottipati Vinoda Babu and argued that the writ petition is liable to be dismissed because the petitioner failed to avail the alternative remedy available to him under Section 162 of the Act. He then argued that the petitioner should be non-suited because he has not approached the Court with clean hands. Learned counsel pointed that the petitioner deliberately withheld the facts relating to the enquiry held against him and the statements made by Lt. Commander S. Sinha and his daughter Ms. Juanita Sinha, which clearly establish that he had outraged the modesty of the minor child. Sri Reddy submitted that the petitioner cannot complain of violation of the rules of natural justice because he did not avail the opportunity to cross-examine the witnesses in terms of Clause 27 of the Regulations.

I have considered the respective submissions. Since the petitioner has not filed rejoinder to controvert the averments contained in the counter-affidavit of Commander Gottipati Vinoda Babu, it must be held that the punishment was imposed on him after holding enquiry in accordance with the provisions contained in the Regulations, which represent statutory embodiment of the rules of natural justice. A

reading of summary of evidence shows that after recording the statements of Lt. Commander S. Sinha and his daughter Ms. Juanita Sinha, the enquiry officer gave opportunity to the petitioner to cross-examine them, but he declined to do so. Therefore, he cannot be heard to complain of the violation of the rules of natural justice.

There is another reason for not entertaining the petitioner's plea of violation of the rules of natural justice. He has neither pleaded nor learned counsel for the petitioner has been able to show that his client's cause has been prejudiced on account of the alleged denial of opportunity to cross-examine the witnesses. Therefore, I do not find any justification to entertain the petitioner's prayer on the spacious ground of violation of the rule of hearing.

In early 60's and 70's, the Superior Courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the petitioner to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premises that violation of the rules of natural justice is itself a prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the petitioner pleads and prima facie shows that his cause has been prejudiced. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi v. State of Orissa**[1], **R.C.Sharma v. Union of India**[2], **Sunil Kumar Banerjee v. State of West Bengal**[3], **K.N. Tripathi v. State Bank of India**[4], **Mumtaz Hussein Ansari v. State of U.P.**[5], **Kashinath Dikshita v. Union of India**[6], **Chandrama Tiwari v. Union of India**[7], **Managing Director, ECIL v. B. Karunakar**[8], **Krishanlal v. State of Jammu and Kashmir**[9], **State Bank of Patiala v. S.K.**

Sharma[10], **S.K. Singh v. Central Bank of India**[11], **State of Uttar Pradesh v. Shatrughanlal**[12], **Food Corporation of India v. Padamkumar Bhuvan**[13], **State of Uttar Pradesh v. Harendra Arora**[14], **Oriental Insurance Company v. S. Balakrishnan**[15], **State of Uttar Pradesh v. Rameshchand Manglik**[16], **Canara Bank v. Debasis Das**[17], **Indra Bhanu Gaur v. Committee, Management of M.M Degree College**[18], **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick**[19], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**[20], **Punjab National Bank v. Manjeet Singh**[21], **P.D. Agrawal v. State Bank of India**[22] and Civil Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

In **B. Karunakar's** case (supra) the Constitution Bench considered the apparent conflict of views expressed by different Benches of the Supreme Court in **Union of India v. Mohd. Ramzan Khan**[23] and **K.C. Asthana v. State of Uttar Pradesh**[24] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The main question considered by the Constitution Bench was whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. Their Lordships of the Supreme Court also considered the following ancillary/incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent

on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the main question in affirmative, the Supreme Court considered the ancillary questions and answered question No.5 in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of

reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

> "Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora's case** (supra), the Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

> i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.
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> ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.
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> (iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

I n **Indra Bhanu Gaur v. Committee, Management of M.M. Degree College** (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra) the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar**'s case (supra) and observed that the principles of natural justice cannot be put in a straightjacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

I n **Karnataka State Road Transport Corporation v. S.G. Kotturappa** (supra), the Supreme Court held:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of

this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given"

In **Punjab National Bank v. Manjeet Singh** (supra), the Supreme Court opined as under:

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

In **P.D. Agarwal v. State Bank of India** (supra), the Supreme Court held that the principles of natural justice cannot be put in a straight jacket formula and then observed:

"Decision of this Court in **S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379]**, whereupon Mr. Rao placed strong reliance to contend that non- observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in **State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364]** and **Rajendra Singh vs. State of M.P. [(1996) 5 SCC 460]**, the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical

> infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula."

In **Ashok Kumar Sonkar v. Union of India** (supra), the Supreme Court held that cancellation of the appellant's appointment on the post of Lecturer in Tridosa Vigyan, IMS, Banaras Hindu University cannot be invalidated on the ground of violation of the rules of natural justice because he did not possess the essential qualifications for appointment on the post and even if notice was given to him, he could not have convinced the competent authority that he was eligible to be appointed as Lecturer in the subject of Tridosa Vigyan. Their lordships of the Supreme Court referred to various judicial pronouncements on the subject and observed:

> "A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

I also agree with learned Assistant Solicitor General that the petitioner's failure to avail the statutory alternative remedy under Section 162 of the Act is sufficient to non-suit him. It is true that in cases involving violation of the rules of natural justice, the High Court can entertain a petition under Article 226 of the Constitution of India despite the availability of alternative remedy, but keeping in view the fact that the petitioner was punished after holding an enquiry in accordance with the statutory regulations, which, as mentioned above, represent statutory embodiment of rules of natural justice, I am not inclined to entertain his grievance by ignoring the factum of availability of alternative remedy.

There is another reason for my disinclination to entertain the petitioner's prayer. The power vested in the High Courts under Article 226 to issue directions, orders or writs including writs of mandamus, habeas corpus, certiorari, quo warranto and prohibition is meant for reaching injustice. It is essentially an equitable jurisdiction. Therefore, the conduct of the person, who seeks equity, is very relevant for deciding whether or not the writ jurisdiction of the High Court should be exercised in his favour. The conduct of the petitioner, to say the least, is reprehensible and unbecoming of a soldier. By outraging the modesty of a girl child of 8½ years, the petitioner exhibited total contempt and disrespect for the human dignity. Therefore, I do not see any reason to interfere with the order of punishment.

In the result, the writ petition is dismissed.

I would have saddled the petitioner with costs, but keeping in view the fact that the matter has remained pending for almost 12 years and no interim order had been passed in favour of the petitioner, I refrain from doing so.

G.S.SINGHVI, C.J.

28th March, 2007.

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[1] (1969) 3 SCC 392
[2] (1976) 3 SCC 574
[3] (1980) 3 SCC 304
[4] (1984) 1 SCC 43
[5] (1984) 3 SCC 295
[6] (1986) 3 SCC 229
[7] (1987) Suppl. SCC 518
[8] (1993) 4 SCC 727
[9] (1994) 4 SCC 422
[10] (1996) 3 SCC 364

[11] (1996) 6 SCC 415
[12] (1998) 6 SCC 651
[13] (1999) SCC (L&S) 620
[14] (2001) 6 SCC 392
[15] (2003) 11 SCC 734
[16] (2003) 3 SCC 443
[17] (2003) 4 SCC 557
[18] (2004) 1 SCC 281
[19] (2005) 2 SCC 237
[20] (2005) 3 SCC 409
[21] (2006) 8 SCC 647
[22] (2006) 8 SCC 776
[23] (1991) 1 SCC 588
[24] (1988) 3 SCC 600